

STATE OF OHIO            )  
  )ss:  
COUNTY OF WAYNE    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

GERALD E. HINTON

Petitioner

v.

TIMOTHY R. VANSICKLE, JUDGE

Respondent

C.A. No. 21AP0012

ORIGINAL ACTION IN  
PROCEDENDO

Dated: May 3, 2021

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PER CURIAM.

{¶1} Petitioner, Gerald E. Hinton, has petitioned this Court for a writ of procedendo to compel Respondent, Judge Timothy VanSickle, to rule on a motion to vacate a void judgment. For the following reasons, this Court dismisses the petition sua sponte.

{¶2} To obtain a writ of procedendo, Mr. Hinton must establish that he has a clear legal right to require the judge to proceed, that the judge has a clear legal duty to proceed, and that there is no adequate remedy available in the ordinary course of law. *State ex rel. Ward v. Reed*, 141 Ohio St.3d 50, 2014-Ohio-4512, ¶ 9, citing *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 462 (1995). Procedendo is the appropriate remedy when a court has refused to render a judgment or

has unnecessarily delayed proceeding to judgment. *See, e.g., State ex rel. CNG Financial Corp. v. Nadel*, 111 Ohio St.3d 149, 2006-Ohio-5344, ¶ 20.

{¶3} Sua sponte dismissal of a petition, without notice, is appropriate only if the petition is frivolous or the claimant obviously cannot prevail on the facts alleged in the petition. *See, e.g., State ex rel. Duran v. Kelsey*, 106 Ohio St.3d 58, 2005-Ohio-3674, ¶ 7. Mr. Hinton cannot prevail on the facts alleged in his petition because he did not name the correct respondent.

{¶4} Mr. Hinton sought a writ of procedendo to order Judge VanSickle to rule on his motion to vacate. According to Mr. Hinton's complaint, and attachments, Mr. Hinton filed a motion to vacate in case number 2014CRA000893. He later filed a motion to amend to substitute the correct case number, 2014CRC-I000266, and the motion to vacate was filed in that case. It is this amended motion to vacate that Mr. Hinton has sought a writ of prohibition to order Judge VanSickle to rule on.

{¶5} A review of the dockets for the case numbers identified by Mr. Hinton demonstrates that Mr. Hinton named the wrong respondent in this action. Case number 2014CRA000893 belongs to a Wayne County Municipal Court case which was presided over by Judge VanSickle. Mr. Hinton was later indicted in Wayne County Common Pleas Court case number 2014CRC-I000266. That is also the case in which Mr. Hinton filed his amended motion to vacate that is the subject of this procedendo action.

{¶6} Mr. Hinton cannot demonstrate that he has a clear legal right to require Judge VanSickle to proceed or that Judge VanSickle has a clear legal duty to rule on the motion, as are required for this Court to grant the petition. *See, e.g., Ward* at ¶ 9. Judge

VanSickle, as a Wayne County Municipal Court judge, does not have the authority to rule on a motion pending on the docket of a Wayne County Common Pleas Court case. Mr. Hinton does not have a clear legal right to require Judge VanSickle to proceed to act on a case that does not fall within his jurisdiction. Likewise, Judge VanSickle does not have a clear legal duty to act based on the facts alleged in the petition. Because Mr. Hinton cannot prevail based on the facts alleged in the petition, sua sponte dismissal is appropriate.

{¶7} Mr. Hinton's petition is dismissed. Costs are taxed to Mr. Hinton. The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. *See* Civ.R. 58(B).

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DONNA J. CARR  
FOR THE COURT

TEODOSIO, J.  
CALLAHAN, J.  
CONCUR.

APPEARANCES:

GERALD E. HINTON, Pro se, Petitioner.